

**U.S. Senate Committee on Indian Affairs Oversight Hearing on
Law Enforcement in Indian Country**

**Statement Presented by Bonnie Clairmont
Victim Advocacy Specialist**

JUNE 21, 2007

Chairman Dorgan, members of the committee: Thank you for holding this hearing today and thank you for this opportunity to provide testimony. My name is Bonnie Clairmont and I am from the HoChunk Nation originally from Wisconsin. For the past three years, I have been employed with the Tribal Law & Policy Institute as the Victim Advocacy Program Specialist. I live in St. Paul MN but my work involves training, technical assistance and victim advocacy throughout Indian Country.

Prior to my employment with the Tribal Law & Policy Institute, I was an advocate for battered and sexually assaulted women for over 25 years. Throughout my 25 year career, I was an advocate for victims of sexual assault whose cases were being heard in state courts and working with communities that were developing multidisciplinary response teams and establishing or improving sexual assault protocol under state jurisdiction. My work also includes working with a few tribal nations starting to do similar work, that of creating multidisciplinary response teams and to improve their response to victims of sexual assault. One of my roles as an advocate is to be a voice for women who have been harmed by

violence and I am honored to do that today on behalf of Indian women who are being raped and murdered. I want to focus my comments on the role of law enforcement within the context of sexual violence crimes committed against American Indian women based on my advocacy work.

The Tribal Law & Policy Institute is a non profit organization (see www.tlpi.org) is a Native owned and operated nonprofit corporation, organized to design and develop education, research, training and technical assistance programs which promote the enhancement of justice in Indian Country and the health, well-being, and culture of Native peoples. The vision of the Tribal Law and Policy Institute (TLPI) is to empower Native communities to create and control their own institutions for the benefit/welfare of all community members now and for the future generations. The mission of TLPI is to embrace and strengthen tribal sovereignty and justice while honoring community values, protecting rights, and promoting well being.

In 2004, Amnesty International (AI) approached the TLPI seeking technical assistance with Amnesty's planned study into the problem of sexual violence against Native American and Alaska Native women. Over the course of the last three years, TLPI has provided a range of technical assistance services to AI on this study – including providing background, providing resources, gathering information, establishing contacts, setting up meetings with service providers,

identifying victim/survivors to interview and reviewing drafts and reports for accuracy.

Most importantly, however, we took a lead role interviewing victim/survivors. I have been the lead person in interviewing the victim/survivors in two of the locations (Standing Rock and Oklahoma) in order to maintain culturally appropriate and victim sensitive interviewing. I was personally involved in interviews of more than 50 victim/survivor interviews.

I would like to clarify two issues. First, Amnesty International paid TLPI for all the time and travel costs associated with this project and no federal funds were used for this project. Second, I am appearing today in my own capacity rather than on behalf of the Tribal Law and Policy Institute.

We have been hearing the statistics that American Indian and Alaska Native women are being raped, beaten, stalked and murdered at rates higher than any other race. As cited in the *Amnesty report, Maze of Injustice, The Failure to Protect Indigenous Women from Sexual Violence in the USA*, the U.S.

Department of Justice's own statistics indicate that Native American and Alaska Native women are more than 2.5 times more likely than other women in the US to be raped. According to these Department of Justice statistics, more than 1 in 3 Native American and Alaska Native women will be raped at some point during their lives and 86% of perpetrators of these crimes are non-Native men. It is

difficult to know the full prevalence and scope of sexual violence in Indian Country since there have been no comprehensive studies done. Based on my years of experience as an advocate, I bear witness to the fact that the statistics reflected in this report are grossly underestimated.

Amnesty International's research and report only validated what Native American and Alaska Native women have known for a long time; that sexual violence against women has reached epidemic proportions and what is most troubling is that the vast majority of Indian women often face insurmountable barriers to accessing services and realizing any type of justice for the horrendous acts of violence they have experienced. The Amnesty Report contains numerous stories of tragedy, but woven throughout the report are stories of survival and stories of hope. One by one, Indian women came forward to tell their stories, they stood up and broke their silence, taking huge risks to speak out about the many injustices they are experiencing, hoping that their stories, their gifts of truth would create change for other Indian women who are sexually assaulted, beaten and murdered and that they would find some measure of justice by speaking out.

In my 25 year career as an advocate, I have worked with hundreds of Indian women who've been raped, battered and family members of women who've been murdered. I provided advocacy and support to victims of sexual assault from all walks of life both Native and non-Native because the crime of rape knows no

racial or socioeconomic barriers. I come here today to bear witness to the pain and suffering and devastation caused by these horrific crimes. I bear witness to the huge barriers that Indian women face as they seek justice, safety and healing. Based on my experience of working within state courts and working with multidisciplinary teams within these jurisdictions, many of these barriers are being removed for victims in mainstream communities, yet that is not the reality for Indian women who experience sexual assault in tribal communities. This needs to change because in my mind, these statistics are not just numbers. It is so easy to become lulled into a state of apathy when we only see numbers. I must constantly remind people, that we must be outraged, appalled and spurred to action because each of these statistics represents a human being, someone's mother, daughter, partner, relative, friend.

Sexual violence comes in many forms and regardless of whether the type of sexual assault fits neatly into a criminal definition, the effects of the choice that that offender made to violate someone, to totally strip her of her decision making powers, for a few minutes of gaining some personal satisfaction for himself, can result in weeks, months and often years of pain and suffering for the victim. Yet recent statistics on the rate of prosecution of sexual assaults in Indian Country indicate that offenders are being allowed to rape with impunity. I cannot impress upon you enough, the devastating impact that one experience of sexual violence can have on a person. Sexual violence is much more than a physical assault and violation but extends to a holistic impact affecting every aspect of that

person's humanity including her mind, her spirit and her body and the effects can remain with the victim often for years. Indian women who've been raped must not only experience one of the most humiliating, life altering traumas that anyone can experience, but must also grapple with the negative attitudes about rape, the lack of services available in many tribal communities, the lack of appropriate response from service providers such as within the Indian Health Service, and tribal, state and federal law enforcement authorities. It has been my experience that most women from mainstream communities have access to these crucial services, but that is not the reality for Indian women who've been sexually assaulted.

I would like to describe a typical scenario that Indian women may experience after a sexual assault. This woman has just experienced one the most humiliating, life threatening crimes that anyone can experience. She called law enforcement authorities - yet no one has responded to her call, perhaps due to severely under-resourcing or poor access to training. This may due to law enforcement agencies lack of collaboration and communication or their inability to establish clear lines of authority and jurisdiction. She knows that with other calls, generally it can often take days to get an officer to respond. After much thought she has decided to set out to have a rape exam performed because she's been told that's the only way the assault can be investigated and her perpetrator can be prosecuted with the evidence they will gather at the hospital. She's afraid that she may have contracted a sexually transmitted infection or may

have even gotten pregnant from the rape. She either must ask someone to give her a ride, or if she has a vehicle, it may not be very reliable. If she's fortunate she may have someone such as a friend or relative, even better an advocate accompanying her on this trip otherwise she is driving alone to the hospital that may be as far as 100 miles away. There she is, perhaps in a great deal of physical pain because Indian women are more likely to suffer physical injury with the rape. She may be in severe emotional distress, not fully comprehending the magnitude of the sexual assault or what will happen to her in the future. She is terrified, second guessing whether she should report her assault to law enforcement authorities because her perpetrator threatened her with further harm if she did. Yet despite her efforts to seek services that most women in mainstream communities are able to receive, it is quite likely that she will be turned away at the end of her journey, or will be referred to another facility because this Indian Health Service facility does not have a rape kit or anyone who can administer the exam. For those few Indian women who are fortunate enough to have a rape exam done, and to have their assaults investigated, they many never see their cases prosecuted or even receive any communication on the status of their cases or whether the suspect was arrested or not. Yet they see their rapist go free. He may pass by her house on a daily basis. He may be bragging about his exploits, alleging that she asked for it and deserved it. These are the stories that I have heard all too often, to which I bring testimony.

American Indian and Alaska Native women who are sexually assaulted have rights and needs that must be met. American Indian and Alaska Native women need services, need the help of advocates yet there are still many reservations and tribal communities where there are no advocacy services. American Indian and Alaska Native women who are raped must be afforded the same services as other women who've been raped from the mainstream community. Yet that is not the reality in Indian Country. Indian women who've been raped need forensic rape exams. They need to be examined by nurses who are trained and who are sensitive to their needs. Indian women need to have emergency contraception to prevent pregnancy from the rape. Indian women need prophylactic treatment to prevent the possible transmission of sexually transmitted diseases. Yet there are many Indian Health Services facilities that are not equipped to provide these services. Many do not have the necessary kits. Many of them do not have trained nurses or physicians to administer the kits and still more do not provide the emergency contraception and STI treatment that are needed by any woman who's been raped. Indian women must be afforded the same services that I know women from the mainstream society are receiving. That is not the reality for Indian women seeking emergency medical treatment following a sexual assault. Moreover, leadership at the Indian Health Service has been unable or unwilling to develop national standards or guidelines to its facilities on responding to sexual violence. This is unacceptable.

Indian women who've been raped have a right to safety and justice. The only way most Indian women feel they can find justice is by turning to law enforcement. Yet that is not the reality in Indian Country because in many tribal communities, there are no tribally based law enforcement officers so they must rely on law enforcement officers outside of their community such as the Bureau of Indian Affairs police, state or local law enforcement agencies or the Federal Bureau of Investigation authorities. The response time in most instances, is very slow. There is often a serious lack of cooperation and collaboration between these agencies and tribal authorities and advocates. Consequently, there is a serious lack of reporting of sexual assaults perpetrated on Indian women. Indian women do not report their assaults for many reasons. One of the reasons that Indian women who've been raped don't report their assaults is because they don't trust law enforcement authorities. They have heard the horror stories that they may be blamed, not taken seriously. They are criticized for reporting and then recanting their stories. They are questioned inappropriately leaving the woman feeling responsible for the crime rather than being seen as a legitimate victim of a crime.

There is a lack of awareness as to why sexual violence happens in tribal communities. The problem of sexual violence against Indian women is not simply caused by the "meth" problem in Indian Country. Indeed it may have some impact on the problem of violence against Indian women but the problem of violence against Indian has been a pervasive problem in tribal communities for

many years prior to the increasing prevalence of this drug and it's associated problems. Alcohol has always been the drug of choice to facilitate rape and the drug most commonly associated with sexual violence.

Indian women also report that even if they do report their assault to law enforcement, nothing will happen especially if the perpetrator is a non-Native perpetrator or if the perpetrator is an acquaintance or husband. There is an apparent lack of trust in tribal, state and federal law enforcement authorities. A woman must be able to trust law enforcement, to be willing to cooperate with them, and many of these officials have not earned the trust. . So today, I also carry the message that healing is very difficult to achieve if victims do not feel safe or if they do not experience some measure of justice.

It is quite apparent that there is a desperate need for law enforcement reform, desperate need for sweeping changes to law enforcement policy and protocols, increased resources for law enforcement to increase the response needed to these crimes and last but not least, all law enforcement agencies, particularly those federal agencies such as the Bureau of Indian Affairs law enforcement agencies and the Federal Bureau of Investigations should be mandated to work in closer collaboration with tribal governments, tribally based law enforcement officials, advocates, through establishing cooperative agreements for the sharing of information, working together to establish coordinated community response teams. There is a clear lack of effective collaboration between tribal authorities

and their federal partners. Even if tribal authorities want to prosecute many of these perpetrators, they are unable to do so. As cited in the Amnesty report, the Violence Against Women Act called for coordinated, community responses to domestic violence, sexual assault, and stalking crimes. It is quite evident that coordinated community response is the best approach for achieving lasting and effective results. Strong partnerships and vigorous coordination must be present at the federal, state, local and tribal levels in order for real change to occur.

I believe that many of these problems are not insurmountable and can be ameliorated. I fully support and agree with the recommendations in the Amnesty report which are summarized as follows:

Key Recommendations

Provide Additional Resources for Standing Rock Initiatives

- *The federal government should provide funds immediately for the Standing Rock Tribe to support its shelter for survivors of sexual violence on the Reservation.*
- *The federal government should ensure that there is additional funding to support the increased capacity of shelters throughout North and South Dakota that provide services to Indian women.*
- *The federal government should allocate long term and sustained funds to the Standing Rock Police Department, including funds to increase staffing.*
- *Law enforcement response to women who are survivors of sexual violence must be improved urgently (see below).*

Develop comprehensive plans of action to stop violence against Indigenous women

- *Federal and state governments should consult and co-operate with Indigenous nations and Indigenous women to institute plans of action to stop violence against Indigenous women.*
- *Federal, state and tribal authorities should, in consultation with Indigenous peoples, collect and publish detailed and comprehensive data on rape and other sexual violence that shows the Indigenous or other status of victims and perpetrators and the localities where such offences take place, the number of cases referred for prosecution, the number declined by prosecutors and the reasons why.*

Ensure Appropriate, Effective Policing

- *Federal authorities must take urgent steps to make available adequate resources to police forces in Indian and Alaska Native villages. Particular attention should be paid to improving coverage in rural areas with poor transport and communications infrastructure.*
- *Law enforcement agencies should recognize in policy and practice that all police officers have the authority to take action in response to reports of sexual violence, including rape, within their jurisdiction and to apprehend the alleged perpetrators in order to transfer them to the appropriate authorities for investigation and prosecution. In particular, where sexual violence in committed in Indian Country and in Alaska Native villages, tribal law enforcement officials must be recognized as having authority to apprehend both Native and non-Native suspects.*
- *In order to fulfil their responsibilities effectively, all police forces should work closely with Indigenous women's organizations to develop and implement appropriate investigation protocols for dealing with cases of sexual violence.*

Ensure Access to Sexual Assault Forensic Examinations

- *Law enforcement agencies and health service providers should ensure that all Indigenous women survivors of sexual violence have access to adequate and timely sexual assault forensic examinations without charge to the survivor and at a facility within a reasonable distance.*
- *The federal government should permanently increase funding for the Indian Health Service to improve and further develop facilities and services, and increase permanent staffing in both urban and rural areas in order ensure adequate levels of medical attention.*

- *The Indian Health Service and other health service providers should develop standardized policies and protocols, which are made publicly available and posted within health facilities in view of the public, on responding to reports of sexual violence.*
- *The Indian Health Service and other health service providers should prioritize the creation of sexual assault nurse examiner programs and explore other ways of addressing the shortage and retention of qualified Sexual Assault Nurse Examiners.*

Ensure that prosecution and judicial practices deliver justice

- *Prosecutors should vigorously prosecute cases of sexual violence against Indigenous women and should be sufficiently resourced to ensure that the cases are treated with the appropriate priority and processes without undue delay. Any decision not to proceed with a case, together with the rationale for the decision, should be promptly communicated to the survivor of sexual violence and any other prosecutor with jurisdiction.*
- *U.S. Congress should recognize that tribal authorities have jurisdiction over all offenders who commit crimes on tribal land, regardless of their Indigenous or other identity and the authority to impose sentences commensurate with the crime that are consistent with international human rights standards.*
- *Federal authorities should make available the necessary funding and resources to tribal governments to develop and maintain tribal courts and legal systems which comply with international human rights standards.*

Ensure Availability of Support Services for Survivors

- *All governments should support and ensure adequate funding for support services, including shelters, for American Indian and Alaska Native survivors of sexual violence.*

Urge the U.S. Congress to Provide Adequate Funding

Amnesty International is currently asking Congress to undertake the following important steps:

- *Fully fund and implement the Violence Against Women Act -- and in particular Tribal Title (Title IX), the first-ever effort within VAWA to fight violence against Native American and Alaska Native women. This includes a national baseline study on sexual violence against Native women, a study on the incidence of*

injury from sexual violence against Native women and a Tribal Registry to track sex offenders and orders of protection.

- *Increase funding for the Indian Health Service (IHS) and IHS contract facilities. Such monies should be used to increase the number of Sexual Assault Nurse Examiners so that survivors may receive timely forensic medical examinations, at no charge, following sexual assault. Furthermore, the IHS should ensure that appropriate protocols are in place for the treatment of survivors of sexual violence.*

I, and my sister advocates, have worked long and hard to raise awareness to the problem of sexual violence in our communities, to create and improve services for victims of sexual violence, to mobilize our communities to protect Indian women and to hold offenders accountable. Much of the work of advocates throughout Indian Country started from our kitchen tables and front porches and mostly with very limited resources. I am proud of the work done by the many Indian women advocates that have worked tirelessly to send a resounding message that Indian women are experiencing a national tragedy. It is clear that those voices have been heard with the passage of VAWA 05 Title IX (Tribal Programs).

The Violence Against Women Act has improved federal, state, and local responses to sexual assault however much remains to be done in order to more fully address the crises that is occurring in Indian Country and addressing the needs of victims of sexual violence and their families. While the VAWA initiated progress in strengthening the criminal justice system's response to sexual violence, it's clear that major service, funding and policy gaps still exist in Indian

Country. Although funding is desperately needed, money alone will not solve these problems.

Lastly, improving policing alone will not solve the problem. It is my hope that the federal government in close partnership with tribal governments, should take steps to hold offenders accountable and to provide the level of services needed by all victims of sexual violence and those same services that are afforded to victims from the mainstream community. It must be made clear that sexual violence in any form, will not be tolerated, and that victims will be protected with the full force of the law.

For more specific information on the Amnesty International report "Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA", I have attached Amnesty International testimony (by Carol Pollack, Researcher for Amnesty International U.S.A.) from a June 1, 2007 U.S. House of Representatives Field Hearing of the Committee on Natural Resources, Office of Indian Affairs. I ask that this attachment be made part of the official record on this hearing of the U. S. Senate Committee on Indian Affairs.



“The Needs and Challenges of Tribal Law Enforcement on Indian Reservations”
Field Hearing of the Committee on Natural Resources, Office of Indian Affairs
U.S. House of Representatives

Statement Presented by Carol Pollack
Researcher for Amnesty International U.S.A.

JUNE 1, 2007

Introduction

Madame Chairwoman and members of the Committee, thank you for inviting Amnesty International to testify on an issue that significantly impacts the human rights of American Indian and Alaska Native women. I would like to submit my full statement for the record. I will focus my remarks on the findings of Amnesty International’s recent report “Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA”.

Amnesty International is a worldwide human rights movement with more than 2.2 million members and supporters in more than 150 countries and territories. Amnesty International’s vision is for every person to enjoy all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. Amnesty International’s mission is to conduct research and take action to prevent and end grave abuses of all human rights. Amnesty International is independent of any government, political ideology, economic interest or religion. The organization is funded by individual members; no funds are sought or accepted from governments for investigating and campaigning against human rights abuses.

“Maze of Injustice” Report

On April 24, 2007, Amnesty International released the findings of over 2 years of investigation into the problem of sexual violence against Native American and Alaska Native Women. The report is part of a worldwide campaign to Stop Violence against Women launched by Amnesty International in March 2004. Since then AI has published reports on aspects of violence against women in 40 countries.

Amnesty International launched an investigation after learning that U.S. Department of Justice’s own statistics indicate that Native American and Alaska Native women are more than 2.5 times more likely than other women in the US to be raped. According to Department of Justice statistics, more than 1 in 3 Native American and Alaska Native women will be raped at some point during their lives and 86% of perpetrators of these crimes are non-Native men.

Amnesty International's report examines some of the reasons why Indigenous women in the US are at such risk of sexual violence and why survivors are so frequently denied justice. The report is based on research carried out during 2005 and 2006 in consultation with Native American and Alaska Native individuals. In the course of this research, Amnesty International's interviewed survivors of sexual violence and their families, activists, support workers, service providers, and health workers. Amnesty International also interviewed officials across the US, including tribal, state and federal law enforcement officials and prosecutors, as well as tribal judges. Amnesty International also met representatives from the federal agencies which share responsibility with tribal authorities for addressing or responding to crimes in Indian Country.

Amnesty International conducted detailed research in three locations with different policing and judicial arrangements: the State of Oklahoma, the State of Alaska, and the Standing Rock Reservation in North and South Dakota. While this report presents a national overview of sexual violence against Indigenous women, it primarily presents our specific findings in these key areas of research.

Each location was selected for its specific jurisdictional characteristics. Oklahoma is composed for the most part of parcels of tribal lands intersected by state land where tribal, state or federal authorities may have jurisdiction. In Alaska, federal authorities have transferred their jurisdiction to state authorities so that only tribal and state authorities have jurisdiction. The Standing Rock Reservation illustrates the challenges involved in policing a vast, rural reservation where tribal and federal authorities have jurisdiction.

The Standing Rock Reservation (also known as the Standing Rock Lakota/Dakota Reservation) straddles the border of North and South Dakota and covers an area of 2.3 million acres (approximately 9,312km²). Some 9,000 people live on the Reservation, about 60 per cent of whom are Native American. The Standing Rock Tribal Council is the tribal government and the Standing Rock Police Department (SRPD) is operated by the BIA. The Standing Rock Tribe has a tribal court, which hears civil and criminal complaints.

Amnesty International is indebted to all the survivors of sexual violence who courageously came forward to share their stories and to those who provided support to survivors before and after they spoke with Amnesty International and to the Native American and Alaska Native organizations, experts and individuals who provided advice and guidance on research methodology and on the report itself. Amnesty International hopes that "Maze of Injustice" can contribute to and support the work of the many Native American and Alaska Native women's organizations and activists who have been at the forefront of efforts to protect and serve women.

This report attempts to represent the stories of survivors of sexual violence; their perspectives must inform all actions taken to end violence against Indigenous women. The report presents and references their statements. For example:

One Native American woman living on the Standing Rock Reservation told Amnesty International that in September 2005 her partner raped her and beat her so severely that she had to be hospitalized. He was released on bond and an arrest warrant was issued after he failed to appear in court. However, SRPD officers did not arrest him. One morning she woke up to find him standing by her couch looking at her. Interview (name withheld), February 2006

High Levels of Sexual Violence

Amnesty International's research confirmed what Native American and Alaska Native advocates have long known: that sexual violence against women from Indian nations is at epidemic proportions and that Indian women face considerable barriers to accessing justice. Native American and Alaska Native women may never get a police response, may never have access to a sexual assault forensic examination and, even if they do, they may never see their case prosecuted. As a result of barriers including a complex jurisdictional maze and a chronic lack of resources for law enforcement and health services, perpetrators are not being brought to justice.

Amnesty International's interviews suggest that available statistics on sexual violence greatly underestimate the severity of the problem and fail to paint a comprehensive picture of the abuses. No statistics exist specifically on sexual violence in Indian Country; more data is urgently needed to establish the prevalence against Indigenous women.

One support worker in Oklahoma told AI that only three of her 77 active cases of sexual and domestic violence involving Native American women were reported to the police. A medical professional responsible for post-mortem examinations of victims of rape and murder in Alaska told AI that Alaska Native women comprised almost 80 percent of confirmed cases in the state since 1991.

According to FBI figures, in 2005 South Dakota had the fourth highest rate of "forcible rapes" of women of any US state. Interviews with survivors of sexual violence, activists and support workers on the Standing Rock Reservation indicate that rates of sexual violence are extremely high. Many women interviewed by Amnesty International on the Standing Rock Reservation could not think of a single Native American woman within their community who had not been subjected to sexual violence, and many survivors reportedly experienced sexual violence several times in their lives by different perpetrators. There were also several reports of gang rapes and Amnesty International was told of five rapes which took place over one week in September 2005.

High levels of sexual violence on the Standing Rock Reservation take place in a context of high rates of poverty and crime. South Dakota has the highest poverty rate for Native American women in the USA with 45.3 per cent living in poverty. Crime rates on the Reservation often exceed those of its surrounding areas.

Amnesty International documented many incidents of sexual violence against American Indian and Alaska Native women however the great majority of stories remain untold. Violence against women is characteristically underreported due to fear of retaliation and a lack of confidence that reports will be taken seriously. Historical relations between Indigenous women and government agencies also affect the level of reporting of sexual violence.

There are more than 550 federally recognized American Indian and Alaska Native tribes in the United States. Federally recognized Indian tribes are sovereign under U.S. law, with jurisdiction over their citizens and land and maintaining government-to-government relationships with each other and with the U.S. government. The unique legal relationship of the United States to Indian tribes creates a federal trust responsibility to assist tribal governments in safeguarding the lives of Indian women.

The welfare and safety of American Indian and Alaska Native women, as citizens of sovereign tribal nations, are directly linked to the authority and capacity of their nations to address sexual

violence. However, the federal government has steadily eroded tribal government authority and chronically underfunded those law enforcement agencies and service providers that should protect Indigenous women from sexual violence.

Issues of Jurisdiction

Amnesty International received numerous reports that complicated jurisdictional issues can significantly delay the process of investigating and prosecuting crimes of sexual violence. The federal government has created a complex maze of tribal, state and federal law that has the effect of denying justice to victims of sexual violence and allowing perpetrators to evade prosecution.

Three main factors determine where jurisdictional authority lies: whether the victim is a member of a federally recognized Indian tribe or not; whether the accused is a member of a federally recognized Indian tribe or not; and whether the alleged offence took place on tribal land or not. The answers to these questions are often not self-evident. However, this information determines whether tribal, state or federal authorities have jurisdiction to investigate and prosecute the crime. Jurisdiction of these different authorities often overlaps, resulting in confusion and uncertainty.

Tribal and federal authorities have concurrent jurisdiction on all Standing Rock Reservation lands over crimes where the suspected perpetrator is American Indian. In instances in which the suspected perpetrator is non-Indian, federal officials have exclusive jurisdiction. Neither North nor South Dakota state police have jurisdiction over sexual violence against Native American women on the Standing Rock Reservation. State police do however have jurisdiction over crimes of sexual violence committed on tribal land in instances where the victim and the perpetrator are both non-Indian. The jurisdictional challenges differ in Alaska and in Oklahoma.

As recorded by Andrea Smith, University of Michigan, Assistant Professor of Native Studies Jodi Rave, "South Dakota Tribal-City Police Department a National Model for Handling Domestic Abuse," *The Missoulian*, September 24, 2006: "[N]on-Native perpetrators often seek out a reservation place because they know they can inflict violence without much happening to them."

Amnesty International is concerned that jurisdictional issues not only cause confusion and uncertainty for survivors of sexual violence, but also result in uneven and inconsistent access to justice and accountability. This leaves victims without legal protection or redress and allows impunity for the perpetrators, especially non-Indian offenders who commit crimes on tribal land.

According to a state prosecutor in **South Dakota**, the confusing and complicated jurisdiction over crime on and around reservations in South Dakota, means that some crimes just "fall through the cracks." Amnesty International also received reports that perpetrators seek to evade law enforcement by fleeing to another jurisdiction.

Flights by criminal occur in both directions – away from and to tribal land. Walworth County Sheriff Duane Mohr stated the problem with this as follows in the *Rapid City Journal*, 21 December 2005: "It's only about a mile from town to the bridge. Once they cross the bridge [to the Standing Rock Reservation], there's not much we can do... We've had people actually stop after they've crossed and laugh at us. We couldn't do anything."

Some tribal, state and federal law enforcement agencies address the jurisdictional complexities by entering into cooperation agreements. These may take the form of cross-deputization agreements, which allow law enforcement officials to respond to crimes that would otherwise be outside their jurisdiction. A second form of agreement addresses extradition in situations in which a

perpetrator seeks to escape prosecution by fleeing to another jurisdiction. Across the US, experiences of such inter-agency cooperation agreements vary greatly. Where they are entered into on the basis of mutual respect, cooperation agreements can have the potential to smooth jurisdictional uncertainties and allow improved access to justice for victims of sexual violence.

In Standing Rock, the SRPD and some state agencies have explored cooperation through cross-deputization agreements that empower SRPD officers to arrest and detain individuals for crimes committed on state land and enable state police officers to arrest individuals for crimes committed by Native Americans on tribal land.

Problems of Policing

Amnesty International found that police response to sexual violence against American Indian and Alaska Native women at all levels is inadequate. Although jurisdictional issues present some of the biggest problems in law enforcement response, other factors also have a significant impact including lack of resources and lack of communication with survivors.

Lack of Resources: Delays and failure to respond

Law enforcement in Indian Country and Alaska Native villages is chronically underfunded. The U.S. Departments of Justice and Interior have both confirmed that there is inadequate law enforcement in Indian Country and identified underfunding as a central cause. According to the U.S. Department of Justice, tribes only have between 55 and 75 percent of the law enforcement resources available to comparable non-Native rural communities. AI also found that a very small number of officers usually cover large territories and face difficult decisions about how to prioritize their initial responses.

The **Standing Rock** Police Department in February 2006 consisted of six or seven patrol officers to patrol 2.3 million acres of land, with only two officers usually on duty during the day. Amnesty International documented lengthy delays in responding to reports of sexual violence against Indigenous women. Women on the reservation who report sexual violence often have to wait for hours or even days before receiving a response from the police department, if they receive a response at all.

It feels as though the reservation has become lawless” Roundtable interview, Standing Rock Reservation (name withheld) February 22, 2006

Sometimes suspects are not arrested for weeks or months after an arrest warrant has been issued. Amnesty International was told that on the Standing Rock Reservation there are on average 600-700 outstanding tribal court warrants for arrest of individuals charged with criminal offences. Failure to apprehend suspects in cases of sexual violence can put survivors at risk, especially where the alleged perpetrator is an acquaintance or intimate partner and there is a threat of retaliation.

The Standing Rock Police Department was selected, together with the law enforcement departments of 24 additional tribal nations, to receive an annual base increase in federal funding of law enforcement services. The SRPD began receiving an additional US\$250,000 per year starting in 2006. However, according to the Chief of Police the funds will be needed primarily to fill vacancies in the existing police force, rather than increasing the number of law enforcement officers on the reservation.

Amnesty International found that FBI involvement in investigations of reports of sexual violence against Indigenous women is rare and even in those cases that are pursued by the FBI, there can be lengthy delays before investigations start.

Amnesty International's research also revealed a worrying lack of communication by all levels of law enforcement with survivors. In a number of cases, survivors were not informed about the status of investigations, the results of sexual assault forensic examinations, the arrest or failure to arrest the suspect, or the status of the case before tribal, federal or state courts.

The mother of a survivor of sexual violence from the Standing Rock Reservation told Amnesty International how she returned home in September 2005 to find her 16-year-old daughter lying half-naked and unconscious on the floor. She took her daughter to the hospital in Mobridge, South Dakota, where a sexual assault forensic examination was performed. She described how the suspected perpetrator, fled to Rapid City, South Dakota, which is outside the jurisdiction of the SRPD. He returned to the Reservation in early 2006 and was held by police for 10 days, although both mother and daughter only discovered this when they rang the SRPD to ask about the status of the case. They found out that the suspect was to go before a tribal court, but the mother told Amnesty International that to get this information, she had to go to Fort Yates and ask them in person. She told Amnesty International that she hoped that the case would be referred to the federal authorities because this would mean a lengthier sentence for the perpetrator. She said that, months after the attack, a Federal Bureau of Investigation (FBI) officer and a BIA Special Investigator arrived unannounced. As the daughter was not home at the time, the mother told them where to find her. However, she never heard from them again. Federal prosecutors did eventually pick up the case and in December 2006 the perpetrator entered into a plea bargain and was awaiting sentencing at the time this report was written. Interview with mother of survivor (name withheld)

Training

Amnesty International is concerned that federal, state and tribal training programs for law enforcement officials may not include adequate or sufficiently in-depth components on responding to rape and other forms of sexual violence, on issues surrounding jurisdiction and on knowledge of cultural norms and practices. As a result officers often do not respond effectively and are not equipped with the necessary skills to deal with crimes of sexual violence.

Amnesty International received reports that small law enforcement agencies with few resources have considerable difficulty freeing up officers to attend training courses. An officer in the SRPD reported that training on interviewing survivors of sexual violence is not available unless it is hosted or paid for by another organization. He noted that, given the limited number of officers on the force, the SRPD cannot provide them all with training opportunities.

Inadequate Forensic Examinations and Related Health Services

An important part of any police investigation of sexual violence involves the collection of forensic evidence. Such evidence can be crucial for a successful prosecution. The evidence is gathered through a sexual violence forensic examination, sometimes using tools known as a "rape kit". The examination is performed by a health professional and involves the collection of physical evidence from a victim of sexual violence and an examination of any injuries that may have been sustained. Samples collected in the evidence kit include vaginal, anal and oral swabs, finger-nail clippings, clothing and hair. All victims of sexual violence should be offered a

forensic examination, regardless of whether or not they have decided to report the case to the police. In its National Protocol for Sexual Assault Medical Forensic Examinations, the US Department of Justice recommends that victims should be allowed to undergo the examination whether or not they formally report the crime.

Law enforcement officials

As the first to respond to reports of a crime, law enforcement officials should ensure that women can get to a hospital or clinic where their injuries can be assessed and the forensic examination can be done. This is particularly important where women have to travel long distances to access a medical facility and may not have any way of getting there themselves, including in Standing Rock. Once a sexual assault forensic examination has been completed, law enforcement authorities are responsible for storing the evidence gathered and having it processed and analyzed by laboratories.

In some cases, law enforcement have mishandled evidence from forensic examinations from health care providers, including through improper storage and loss or destruction of evidence before forensic analysis had been carried out.

Amnesty International found that the provision of sexual assault forensic examinations and related health services to American Indian and Alaska Native women varies considerably from place to place. Survivors of sexual violence are not guaranteed access to adequate and timely sexual assault forensic examinations – critical evidence in a prosecution. Often this is the result of the U.S. government's severe under-funding of the Indian Health Service (IHS), the principal provider of health services for American Indian and Alaska Native peoples.

Health Service Providers

It is essential that health service facilities have the staff, resources and expertise to ensure the accurate, sensitive and confidential collection of evidence in cases of sexual violence and for the secure storage of this evidence until it is handed over to law enforcement officials.

The IHS facilities suffer from under-staffing, a high turnover, and a lack of personnel trained to provide emergency services to survivors of sexual violence. Amnesty International found that the IHS has not prioritized the implementation of programs involving sexual assault nurse examiners (SANEs) -- registered nurses with advanced education and clinical preparation in forensic examination of victims of sexual violence -- throughout its facilities. Although there are no figures on how many IHS hospitals have SANE programs, officials indicated to AI that fewer than 10 had implemented such programs. Moreover, according to a study performed by the Native American Women's Health Education Resource Center, 44 per cent of IHS facilities lack personnel trained to provide emergency services in the event of sexual violence.

Reports to Amnesty International indicate that many IHS facilities lack clear protocols for treating victims of sexual violence and do not consistently provide survivors with a forensic sexual assault examination. IHS officials told Amnesty International that the agency had posted detailed protocols online. However, these protocols are not mandatory and a 2005 survey of facilities by the Native American Women's Health Education Resource Center found that 30 per cent of responding facilities did not have a protocol in place for emergency services in cases of sexual violence. Of the facilities nationwide that reported having a protocol, 56 per cent indicated that the protocol was posted and accessible to staff members.

Amnesty International is also concerned that survivors have sometimes been required to bear the cost of an examination or of travelling long distances to health facilities. Women who have been raped on the Standing Rock Reservation may need to travel for over an hour to get to the IHS hospital in Fort Yates. Once there, they may discover that there is no one on staff who is able to conduct a sexual assault forensic examination. In 2006 the hospital employed one woman doctor who undertook most of the examinations. According to a Fort Yates IHS health professional, “most male doctors don’t feel trained and don’t want to go to court. So they will send rape cases to Bismarck for examination there.” According to the practitioner, only one third of the women referred from Fort Yates on Standing Rock to the medical facility 80 miles away in Bismarck actually receive an examination. Some women do not make the journey to Bismarck and those that do may face lengthy delays and leave without an examination.

Although IHS services are free, if an American Indian woman has to go to a non-IHS hospital for an examination, she may be charged by that facility. The IHS has a reimbursement policy, but it is complex and survivors may not be aware of it. In some cases the IHS has reportedly failed or refused to pay for forensic examinations at outside facilities. This can be a significant obstacle. Survivors of sexual violence in the southern portion of the Standing Rock Reservation are much closer to Mobridge Regional Hospital than Fort Yates, but because the former is not part of the IHS it may require payment. For women dealing with the trauma of very recent sexual violence, concerns about being required to travel further or to pay can be a serious disincentive to undergoing a forensic examination.

Barriers to Prosecution

A Native American woman in 2003 accepted a ride home from two white men who raped and beat her, then threw her off of a bridge. She sustained serious injuries, but survived. The case went to trial in a state court but the jurors were unable to agree on whether the suspects were guilty. A juror who was asked why replied: “She was just another drunk Indian.” The case was retried and resulted in a 60-year sentence for the primary perpetrator, who had reportedly previously raped at least four other women, and a 10-year sentence for the second perpetrator.

Despite the high levels of sexual violence, Amnesty International found that prosecutions for crimes of sexual violence against Indigenous women are rare in federal, state and tribal courts, resulting in impunity for perpetrators. The lack of comprehensive and centralized data collection by tribal, state and federal agencies renders it impossible to obtain accurate information about prosecution rates. However, survivors of sexual abuse, activists, support workers and officials reported that prosecutions for sexual assault are rare in federal, state and tribal courts.

Tribal courts are the most appropriate for adjudicating cases that arise on tribal land. However, the U.S. federal government has interfered with the ability of tribal justice systems to respond to crimes of sexual violence by underfunding tribal justice systems, prohibiting tribal courts from prosecuting non-Indian or non-Alaska Native suspects and limiting tribal court custodial sentencing to only one year per offense.

Given the inadequate rate of federal and state prosecutions of sexual assault cases, some tribal courts prosecute sexual assault cases despite this sentencing limitation to hold offenders accountable. Some tribal prosecuting authorities charge suspected perpetrators with multiple offenses, which provides the possibility of imposing consecutive sentences; others work with criminal sanctions other than imprisonment, including restitution, community service and probation.

At the federal level, crimes on the Standing Rock Reservation may be prosecuted by US Attorneys located in Aberdeen or Bismarck. However, Amnesty International's research suggests that there is a failure at the federal level to pursue cases of sexual violence against Indigenous women. Prosecutors have broad discretion in deciding which cases to prosecute, and decisions not to prosecute are rarely reviewed.

From 1 October 2002 to 30 September 2003, federal prosecutors declined to prosecute 60.3 per cent of the sexual violence cases filed in the United States. Only 27 of the 475 cases they declined were prosecuted in other courts. Because data on sexual violence specifically from Indian Country is not compiled, this statistic includes all cases involving Indigenous and non-Native victims. However, these numbers provide some indication of the extent to which these crimes go unpunished. Significantly, between 2000 and 2003, the BIA was consistently among the investigating agencies with the highest percentage of cases declined by federal prosecutors. It is not possible to establish how many of these cases submitted by the BIA involved sexual violence. The U.S. Justice Department does not publish statistics on the extent to which it prosecutes crimes of rape against Indian women so it is impossible to know the true extent to which it is failing to prosecute these serious crimes.

One of the research challenges faced by Amnesty International was in relation to gathering data related to federal prosecution rates of crimes of sexual violence that take place in Indian Country. Amnesty International sent questionnaires to the 93 individual US Attorneys, who prosecute crimes within Indian Country at the federal level, seeking information on prosecution rates for crimes of sexual violence committed against Indigenous women. Amnesty International was informed by the Executive Office of US Attorneys that individual US attorneys would not be permitted to participate in the survey. The Executive Office of US Attorneys told Amnesty International that data collected is not broken down into specific offense categories, such as sexual assault crimes. The Executive Office for US Attorneys did provide Amnesty International with a list of some of the cases of sexual violence arising in Indian Country that had been prosecuted in recent years. Of the 84 cases provided, only 20 involved adult women. The remaining cases mostly involved children. In the cases listed, prosecutions for sexual violence against adult Native American women took place in only eight of the 93 districts. Given the lack of comprehensive data, Amnesty International was unable to establish the extent to which crimes of sexual violence against Indigenous women are prosecuted by federal authorities.

At the state level, sexual violence crimes carried out in areas bordering the Standing Rock Reservation may be prosecuted by state's attorneys in neighboring counties in North or South Dakota. Many Native Americans from Standing Rock indicated that cases in general involving Native American victims and non-Native perpetrators are not prosecuted vigorously by state courts in North and South Dakota. A District Attorney in a bordering county told Amnesty International that, in South Dakota, insufficient funds can affect the number of cases prosecuted. It would also appear that state attorneys receive little or no training on prosecuting sexual violence and on cultural competency.

Indigenous survivors of sexual violence also face prejudice and discrimination at all stages and levels of federal and state investigation and prosecution. Amnesty International is concerned that this can influence decisions about whether to prosecute cases, how prosecutors present survivors during trials, how juries are selected and how they formulate their decisions.

Amnesty International received a number of reports that prosecutors at all levels fail to provide information consistently to victims of sexual violence about the progress of their cases. Survivors are frequently not informed of whether their cases will proceed to trial.

Inadequate Resources for Indigenous Support Initiatives

Programs run by Native American and Alaska Native women are vital in ensuring the protection and long-term support of Indigenous women who have experienced sexual violence. However, lack of funding is a widespread problem. Programs run by Indigenous women often operate with a mix of federal, state, and tribal funds, as well as private donations. However such funding is often limited.

In 2005, the non-governmental organization South Dakota Coalition against Domestic Violence and Sexual Assault contributed to the founding of Pretty Bird Woman House, a domestic violence program on the Standing Rock Reservation. The program, which is named after Ivy Archambault (Pretty Bird Woman), a Standing Rock woman who was raped and murdered in 2001, operates a shelter in a temporary location and does not yet have funding for direct services for its clients, but helps women to access services off the Reservation. Given the rates of violence against women on the Standing Rock Reservation, it is imperative that the Reservation have its own permanent shelter.

For women in or near the southern part of the Reservation, there are two shelters available: the Sacred Heart Shelter on the Cheyenne River Reservation, or Bridges Against Domestic Violence (BADV), which is located in Mobridge, South Dakota and where up to 85 per cent of women using the shelters are Native American, mainly coming from the Standing Rock Reservation. In March 2005, BADV held a conference entitled "Decide to End Sexual Violence." There were reports that following the conference women on the Reservation showed increased confidence in reporting. Amnesty International believes that public outreach and education such as that undertaken by BADV is an important element in creating an environment in which survivors feel able to report sexual violence.

The federal government should provide funds immediately for the Standing Rock Tribe to support its shelter for survivors of sexual violence on the reservation. The government should ensure that there is additional funding to support the increased capacity of shelters throughout North and South Dakota that provide services to Indian women.

An important achievement in the provision of culturally appropriate support services to Native American and Alaska Native women has been the formation of 16 tribal coalitions working against domestic and sexual violence across the US. The specific activities of the coalitions vary, but often include the provision of training to tribal governments, law enforcement officials, prosecutors, health professionals, support workers and activists. At national level, organizations such as Sacred Circle and Clan Star provide national leadership and policy guidance for Native women's organizations and shelters.

International Law

Sexual violence against women is not only a criminal or social issue; it is a human rights abuse. While the perpetrator is ultimately responsible for his crime, authorities also bear a legal responsibility to ensure protection of the rights and well-being of American Indian and Alaska Native peoples. They are responsible as well if they fail to prevent, investigate and address the crime appropriately.

The United States has ratified many of the key international human rights treaties that guarantee Indigenous women's protection against such abuses, including the right not to be tortured or ill-treated; the right to liberty and security of the person; and the right to the highest attainable standard of physical and mental health. All women have the right to be safe and free from violence.

International law is clear: governments are obliged not only to ensure that their own officials comply with human rights standards, but also to adopt effective measures to guard against acts by private individuals that result in human rights abuses. This duty – often termed “due diligence” -- means that states must take reasonable steps to prevent human rights violations and, when they occur, use the means at their disposal to carry out effective investigations, identify and bring to justice those responsible, and ensure that the victim receives adequate reparation. Amnesty International's research shows that the United States is currently failing to act with due diligence to prevent, investigate and punish sexual violence against Native American and Alaska Native women. The erosion of tribal governmental authority and resources to protect Indigenous women from crimes of sexual violence is inconsistent with international standards on the rights of Indigenous peoples.

The UN Declaration on the Rights of Indigenous Peoples, adopted by the UN Human Rights Council in June 2006, elaborates minimum standards for the recognition and protection of the rights of Indigenous peoples in diverse contexts around the world. Provisions of the Declaration include that Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development (Article 3); that States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women... enjoy the full protection and guarantees against all forms of violence and discrimination. (Article 22(2)); and the right of Indigenous peoples “to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, where they exist, juridical systems or customs, in accordance with international human rights standards” (Article 34).

Key Recommendations

Provide Additional Resources for Standing Rock Initiatives

- The federal government should provide funds immediately for the Standing Rock Tribe to support its shelter for survivors of sexual violence on the Reservation.
- The federal government should ensure that there is additional funding to support the increased capacity of shelters throughout North and South Dakota that provide services to Indian women.
- The federal government should allocate long term and sustained funds to the Standing Rock Police Department, including funds to increase staffing.
- Law enforcement response to women who are survivors of sexual violence must be improved urgently (see below).

Develop comprehensive plans of action to stop violence against Indigenous women

- Federal and state governments should consult and co-operate with Indigenous nations and Indigenous women to institute plans of action to stop violence against Indigenous women.
- Federal, state and tribal authorities should, in consultation with Indigenous peoples, collect and publish detailed and comprehensive data on rape and other sexual violence that shows the Indigenous or other status of victims and perpetrators and the localities where such offences take place, the number of cases referred for prosecution, the number declined by prosecutors and the reasons why.

Ensure Appropriate, Effective Policing

- Federal authorities must take urgent steps to make available adequate resources to police forces in Indian and Alaska Native villages. Particular attention should be paid to improving coverage in rural areas with poor transport and communications infrastructure.
- Law enforcement agencies should recognize in policy and practice that all police officers have the authority to take action in response to reports of sexual violence, including rape, within their jurisdiction and to apprehend the alleged perpetrators in order to transfer them to the appropriate authorities for investigation and prosecution. In particular, where sexual violence is committed in Indian Country and in Alaska Native villages, tribal law enforcement officials must be recognized as having authority to apprehend both Native and non-Native suspects.
- In order to fulfill their responsibilities effectively, all police forces should work closely with Indigenous women's organizations to develop and implement appropriate investigation protocols for dealing with cases of sexual violence.

Ensure Access to Sexual Assault Forensic Examinations

- Law enforcement agencies and health service providers should ensure that all Indigenous women survivors of sexual violence have access to adequate and timely sexual assault forensic examinations without charge to the survivor and at a facility within a reasonable distance.
- The federal government should permanently increase funding for the Indian Health Service to improve and further develop facilities and services, and increase permanent staffing in both urban and rural areas in order ensure adequate levels of medical attention.
- The Indian Health Service and other health service providers should develop standardized policies and protocols, which are made publicly available and posted within health facilities in view of the public, on responding to reports of sexual violence.
- The Indian Health Service and other health service providers should prioritize the creation of sexual assault nurse examiner programs and explore other ways of addressing the shortage and retention of qualified Sexual Assault Nurse Examiners.

Ensure that prosecution and judicial practices deliver justice

- Prosecutors should vigorously prosecute cases of sexual violence against Indigenous women and should be sufficiently resourced to ensure that the cases are treated with the appropriate priority and processes without undue delay. Any decision not to proceed with a case, together with the rationale for the decision, should be promptly communicated to the survivor of sexual violence and any other prosecutor with jurisdiction.
- U.S. Congress should recognize that tribal authorities have jurisdiction over all offenders who commit crimes on tribal land, regardless of their Indigenous or other identity and the authority to impose sentences commensurate with the crime that are consistent with international human rights standards.
- Federal authorities should make available the necessary funding and resources to tribal governments to develop and maintain tribal courts and legal systems which comply with international human rights standards.

Ensure Availability of Support Services for Survivors

- All governments should support and ensure adequate funding for support services, including shelters, for American Indian and Alaska Native survivors of sexual violence.

Urge the U.S. Congress to Provide Adequate Funding

Amnesty International is currently asking Congress to undertake the following important steps:

- Fully fund and implement the Violence Against Women Act -- and in particular Tribal Title (Title IX), the first-ever effort within VAWA to fight violence against Native American and Alaska Native women. This includes a national baseline study on sexual violence against Native women, a study on the incidence of injury from sexual violence against Native women and a Tribal Registry to track sex offenders and orders of protection.
- Increase funding for the Indian Health Service (IHS) and IHS contract facilities. Such monies should be used to increase the number of Sexual Assault Nurse Examiners so that survivors may receive timely forensic medical examinations, at no charge, following sexual assault. Furthermore, the IHS should ensure that appropriate protocols are in place for the treatment of survivors of sexual violence.

We respectfully refer you to “Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA” for more detailed information and recommendations. Thank you for the opportunity to testify on this important human rights topic.